

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MARVIN RHODES,

Plaintiff,  
v.

Case No. 08-CV-50

DR. ENRIQUE LUY,

Defendant.

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**ORDER**

The plaintiff, Marvin Rhodes, a prisoner confined at the Fox Lake Correctional Institution, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. On February 26, 2009, the court granted the defendant's motion for summary judgment and denied the plaintiff's cross-motion for summary judgment. Judgment was entered dismissing this action on the same day. On March 19, 2009, the court denied the plaintiff's motion to alter judgment.

The plaintiff appealed on March 26, 2009, and the Court of Appeals for the Seventh Circuit dismissed his appeal on May 8, 2009. The plaintiff then filed a motion with this court to proceed *in forma pauperis* on appeal on May 12, 2009. However, because his appeal had already been dismissed by the Seventh Circuit, the plaintiff's motion must be denied as moot.

Nevertheless, the plaintiff incurred the full \$455.00 filing fee by filing the notice of appeal. See *Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997), *rev'd on other grounds by*, *Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000) and *Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000). A partial filing fee of \$5.00 was received on May 6, 2009.

This court must now collect the outstanding fees by the procedures outlined in 28 U.S.C. §1915(b). *Newlin*, 123 F.3d at 434.

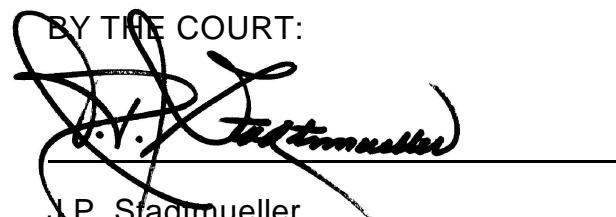
Accordingly,

**IT IS ORDERED** that the plaintiff's motion for leave to proceed *in forma pauperis* on appeal (Docket #49) be and the same hereby is **DENIED**.

**IT IS ALSO ORDERED** that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from the plaintiff's prison trust account the \$450.00 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and numbers assigned to this action.

**IT IS ALSO ORDERED** that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857 and PLRA Attorney, United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Rm. 2722, Chicago, Illinois 60604.

Dated at Milwaukee, Wisconsin, this 22nd day of May, 2009.

BY THE COURT:  
  
J.P. Stadtmueller  
U.S. District Judge